IN THE

No. 493.

Supreme Court of the United States.

OCTOBER TERM, 1906.

FREDERICK SEYMOUR BARRINGTON, Plaintiff in Error,

vs.

THE STATE OF MISSOURI, Defendant in Error.

MOTION OF THE DEFENDANT IN ERROR TO DISMISS THE WRIT OF ERROR FOR WANT OF JURISDICTION TO HEAR AND DETERMINE THE SAME AND TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF MISSOURI.

And now comes the State of Missouri, the defendant in error in the above entitled cause, by its counsel, Herbert S. Hadley, the Attorney-General of the State of Missouri, and respectfully moves the Court to dismiss the writ of error heretofore granted and issued in said cause, for the following reasons, to wit:

I.

Because it is apparent upon the record here presented in said cause, that no Federal question was involved in the pleadings, trial proceedings and determination of said cause, either in the circuit court of St. Louis county or in the Supreme Court of the State of Missouri.

II.

Because it is apparent upon the record that no Federal question was presented to the said circuit court of St. Louis county or to the Supreme Court of the State of Missouri for determination in said cause.

III.

Because it is apparent from the record that no decision of any Federal question was necessarily involved in the rulings, findings, opinions, judgments and decrees, either of the circuit court of St. Louis county, or of the Supreme Court of the State of Missouri in said cause.

IV.

Because it is apparent from the record in said cause, that neither the validity of any treaty or statute, or any authority exercised under the United States, was in any wise drawn in question in said cause, and there was no decision, or judgment against the validity of such treaty, statute or authority.

V.

Because it is apparent from the record that neither the validity of any statute of the State of Missouri or of any authority exercised by or under the State of Missouri was drawn in question in said cause on the ground of being repugnant to the Constitution, treaties or laws of the United States, and there was no decision or judgment in said cause in favor of any such validity.

VI.

Because it is apparent from the record that in the pleadings, rulings, findings, opinions, judgments and decrees of the said circuit court of St. Louis county, or of the Supreme Court of the State of Missouri, in said cause, there is no decision against any title, right, privilege or immunity, specially set up or claimed by the plaintiff in error under the Constitution or any treaty, statute of or commission held or authority exercised under the United States.

VII.

There was no assignment of errors filed with the petition for writ of error or annexed to and returned with the writ of error to this Court, as required by Section 997, U. S. Comp. Stat. 1901.

MOTION TO AFFIRM.

Defendant in error further moves the Court that if the writ of error shall not be dismissed, that the judgment of the Supreme Court of the State of Missouri be affirmed on the ground that, although in the opinion of this Court the record may show that this Court has jurisdiction, it is manifest that the said writ of error was taken for delay only and that the question on which the jurisdiction depends is so frivolous as not to need further argument.

HERBERT S. HADLEY,
Attorney-General of Missouri,
JOHN KENNISH,
Ass't Attorney-General,
For the State.

STATEMENT.

At the September term, 1903, of the circuit court of St. Louis county, and State of Missouri, an indictment for murder in the first degree was returned against the plaintiff in error, Frederick Seymour Barrington, charging him with having killed one James P. McCann at said county on the 18th day of June, 1903. The indictment contained five counts and charged the offense in different forms to meet the evidence as it might develop at the trial. Several dilatory pleas were filed by the plaintiff in error and overruled by the court, to which rulings exceptions were duly saved at the time. We shall refer to those pleas and parts of the record, and only those in which a Federal question was sought to be presented to the court for its decision.

Plaintiff in error filed a demurrer to the indictment, in the sixth ground of which is the following: "6. Because of the inconsistency, multiplicity and repugnancy of said counts, the defendant is being proceeded against in violation of the State and Federal guarantee of due process of law and in violation of his constitutional right to be specifically informed of the nature and cause of the accusation against him." The demurrer was overruled.

A motion to quash the indictment and the several counts thereof was filed by plaintiff in error. The sixth ground of said motion was leveled against the entire indictment, and two of the reasons therein were as follows:

> "6th: Because of the inconsistency, multiplicity and repugnancy of said counts, the defendant is being proceeded against in violation of the State and Federal guarantee of due process of law and in violation of his constitutional right to be specifically informed of the nature and cause of the accusation against him."
>
> "7th. Because the names of the witnesses on the part of the State are not endorsed on said indictment and in support of this ground to quash, defendant states:"

(A statement of considerable length here follows as part of the 7th reason, the purport of which is that the prosecuting attorney of St. Louis county having knowledge of certain witnesses for the State at the time the indictment was returned into court, intentionally refrained from endorsing the names of such witnesses on the indictment for the purpose of preventing the defendant from making due preparation to meet their evidence at the trial.)

It is further alleged in the 7th reason of the sixth ground of the motion to quash that the defendant has a constitutional right to have the names of the witnesses who are to appear against him endorsed on the indictment; that the defendant is a subject of the King of Great Britain, "and as such is entitled under and by virtue of the treaties now existing between the government of the United States and the government of Great Britain, as well as under the laws and the Constitution of the Federal government, and also under the laws of nations, to a fair and impartial trial of said cause, to be fully informed of the nature and cause of the accusation against him, and to know who are the witnesses against him in said cause in order that he may have a fair trial thereof," etc.

After the court had overruled the motion to quash the indictment, a plea in abatement was filed by the plaintiff in error, alleging substantially the same facts as set forth in the 7th reason aforesaid of the 6th ground of said motion to quash. The court having heard the evidence on the plea in abatement, found that the defendant was a native citizen and subject of Great Britain, but found all other issues on said plea against the defendant.

Thereafter plaintiff in error filed an application for a change of venue from St. Louis county (which county constitutes one judicial circuit), on the ground of the prejudice of the inhabitants of said county against him. In said application, it is again alleged that the defendant is a citizen and subject of the King of Great Britain and that as such citizen and by virtue of the treaties now existing between the British government and the United States, as well as under the laws and Constitution of the Federal government and the laws of Nations, he is entitled to a fair and impartial trial, and that he cannot have a fair and impartial trial in said county. After hearing the testimony of forty-one witnesses in support of said application, and thirty-seven against it, the same was overruled by the court.

The defendant was formally arraigned upon said indictment, entered a plea of not guilty thereto, was put upon his trial and on

the 5th day of March, 1904, was convicted of murder in the first degree. Motions for a new trial and in arrest of judgment were filed in due time and by the court overruled. Judgment was then rendered by the court and sentence passed in accordance with the verdict.

The adverse rulings of the court on the motion to quash, plea in abatement and application for change of venue were preserved in the motion for a new trial, and were also, together with the action of the court in overruling the demurrer to the indictment, made grounds of the motion in arrest of judgment.

The plaintiff in error appealed from the judgment to the Supreme Court of the State, and Division No. 2 of said Court (which division has appellate jurisdiction of criminal causes) affirmed the judgment of the trial court. In the opinion of the Court so affirming the judgment, no Federal question was passed upon or referred to.

A motion for a rehearing was then filed in said Division No. 2, in which motion certain Federal questions were sought to be presented. The Court overruled this motion, but delivered no opinion thereon. A motion was then filed by the plaintiff in error for the transfer of said cause from said Division No. 2 to the Court en Banc, in which motion certain Federal questions were again set forth for the consideration of the said Court en Banc. This motion was sustained and the cause was transferred as prayed. Upon a hearing in the Court en Banc, the opinion of Division No. 2 was adopted as the opinion of the Court en Banc, and the judgment was again affirmed. A motion for rehearing was then filed in the Court en Banc, in which certain Federal questions were sought to be raised. This motion was overruled, without opinion, and plaintiff in error prosecuted his appeal by writ of error to this Court, but no assignment of errors was annexed to and returned with the writ of errors, as required by Section 997, Com. Stat., 1901.

The defendant in error contends that as the Supreme Court of the State did not pass upon any Federal question in its decision of this cause, the record of the trial court alone must be looked to for the purpose of ascertaining whether such Federal question was involved in the determination of this case as will sustain the jurisdiction of this Court. It is further contended that such a question is not presented by the record of the trial court, but in case a Federal question was raised it is manifestly without merit and made for the purpose of delay.

BRIEF AND ARGUMENT.

I.

The jurisdiction of this Court to review and re-examine a judgment of the highest court of a State is prescribed by section 709 of the Revised Statutes of the United States, 1901. Under this section there are three classes of cases only in which jurisdiction is given to this court: First, where a final judgment or decision in the highest court of the State draws in question the validity of a treaty or statute or an authority exercised under the United States, and the decision is against their validity; second, cases where such judgment or decree draws in question the validity of a statute of or an authority exercised under any State on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision is in favor of their validity; third, cases where some title, right, privilege or immunity is claimed under the Constitution or any treaty or statute of or commission held or authority exercised under the United States and the decision is against the title, right, privilege or immunity specially set up and claimed by either party under such Constitution, treaty, statute, commission or authority.

Section 709, U. S. Comp. St. 1901.

Hughes' Federal Procedure, p. 485.

Plaintiff in error has not contended that he has been denied any right which would bring this case under either the first or second of the foregoing classes, and if this Court has jurisdiction to re-examine and review the judgment in this case, it must be because a Federal question is presented by the record under the third class of cases mentioned in said section 709.

II.

The title, right, privilege or immunity claimed by the plaintiff in error under the Constitution or any treaty or statute of or

commission held or authority exercised under the United States, in order to present a Federal question to sustain the jurisdiction of this Court, must have been specially set up or claimed by him in the trial court. It is not sufficient that such claim was made for the first time in the appellate court, and while an exception to this rule exists in cases in which the Federal question is first raised in the appellate court and such court takes cognizance of the question thus raised and decides it adversely to plaintiff in error, yet in the case at bar it appears from the record that in the decision of this case no Federal question was passed upon by the Supreme Court of the State, and, therefore, the general rule of law heretofore stated applies in this case.

This Court in the case of Spies vs. Illinois, 123 U. S. 131, said:

> "To give us jurisdiction under section 709 of the Revised Statutes because of the denial by a state court of any title, right, privilege or immunity claimed under the Constitution, or any treaty or statute of the United States, it must appear on the record that such title, right privilege or immunity was 'specially set up or claimed' at the proper time in the proper way. To be reviewable here the decision must be against the right *so set up or claimed*. As the Supreme Court of the State was reviewing the decision of the trial court, it must appear that the claim was made in that court, because the Supreme Court was only authorized to review the judgment for errors committed there, and we can do no more. This is not, as seemed to be supposed by one of the counsel for the petitioners, a question of a waiver of a right under the Constitution, laws or treaties of the United States, but a question of claim. If the right was not set up or claimed in the proper court below, the judgment of the highest court of the State in the action is conclusive, so far as the right of review here is concerned."

Laytor vs. Missouri, 187 U. S. 356.

Jacobi vs. Alabama, 187 U. S. 133.

Mollet vs. North Carolina, 181 U. S. 589.

Dreyer vs. Illinois, 187 U. S. 71.

Brooks vs. Missouri, 124 U. S. 394.

Baldwin vs. Kansas, 129 U. S. 2.

The only title, right, privilege or immunity set up or claimed by plaintiff in error in the trial court under the Constitution or any treaty or statute of or commission held or authority exercised under the United States were those set forth in the demurrer, to the indictment, in the motion to quash, in the plea in abatement and in the application for a change of venue. Assuming that the claims so made were "specially set up and claimed" by the plaintiff in error, and that the rulings of the court against such claims were properly preserved for review in the motion for a new trial and in the motion in arrest of judgment, it remains to be considered whether a Federal question was thus raised in the record which will sustain the jurisdiction of this Court.

III.

In each of said pleadings, except the demurrer, plaintiff in error alleges that he is a citizen and subject of the King of Great Britain, and on the hearing of the plea in abatement, the court made a finding of that fact. The fact that the plaintiff in error may have been a subject of the King of Great Britain does not affect his rights in so far as the existence of a Federal question in this case is concerned.

Under the provisions of section 709, *supra*, the question of citizenship is immaterial as affecting the jurisdiction of this Court.

French vs. Hopkins, 124 U. S. 524.

In Hughes' Federal Procedure, page 485, construing said section 709, the author says:

> "It is manifest, under this statute, that the character of the question decides the right of review, and that the citizenship of the parties has nothing to do with it."

In the case of Spies vs. Illinois, *supra*, Fielden, one of the defendants, was a British subject and as such asserted rights by virtue of a treaty between the British government and the government of the United States, and on that subject, this court said:

> "As to the suggestion by counsel for the petitioners, Spies and Fielden—Spies having been born in Germany and Fielden in Great Britain—that they have been denied by the decision of the court below rights guaranteed to them by treaties between the United States and their

> respective countries, it is sufficient to say that no such questions were made and decided in either of the courts below, and they cannot be raised in this court for the first time. Besides, we have not been referred to any treaty, neither are we aware of any, under which such a question could be raised."

In the case of McDonald et al. vs. The State, 80 Wis., 407, one of the defendants being a British subject, and having asserted certain treaty rights by reason of that fact, the court said:

> "Plaintiffs in error must be content with the same measure of justice which would have been meted to them under the same procedure had they been citizens of this State."

State vs. Neidekier, 184 Mo. 211.

State vs. Rudolph, 187 Mo. 67.

Neither does the question of international law enter into the question of the jurisdiction of this court, for it is general law that aliens are subject to the law of the territory where the crime is committed.

Wharton on Conflict of Laws, sec. 819.

II Cyc., 106.

2 Am. & Eng. Ency. of Law, 65-6.

State vs. Neidekier, 184 Mo. 211.

State vs. Rudolph, 187 Mo. 67.

While the prosecution of an alien for an alleged crime may become the subject of diplomatic negotiations between the governments interested, courts do not take cognizance of the governmental allegiance of the accused.

People vs. McLeod, 1 Hill (N. Y.) 377.

37 Am. Dec. 328.

IV.

One ground of the demurrer to the indictment is as follows:

> "Because of the inconsistency, multiplicity and repugnancy of said counts, the defendant is being proceeded against in violation of the State and Federal guarantee of due process of law and in violation of his constitutional right to be especially informed of the nature and cause of the accusation against him."

The action of the court in overruling the demurrer and holding the indictment sufficient, does not present a Federal question.

In the case of Howard vs. Fleming, 191 U. S. 126, this court said:

> "The highest court of the State has affirmed the validity of the proceedings in that trial, and we may not interfere with its judgment unless some right guaranteed by the Federal Constitution was denied and the proper steps taken to preserve for our consideration the question of that denial.
>
> "The first contention demanding notice is that the indictment charged no crime. * * * In other words, the Supreme Court decided that a conspiracy to defraud was a crime punishable under the laws of the State, and that the indictment sufficiently charged the offense. Whether there be such an offense is not a Federal question, and the decision of the Supreme Court is conclusive upon the matter. Neither are we at liberty to inquire whether the indictment sufficiently charged the offense. Caldwell vs. Texas, 137 U. S. 692, 698; Davis vs. Texas, 139 U. S. 651, 653; Bergemann vs. Backer, 157 U. S. 655."

V.

In the motion to quash the indictment and also in the plea in abatement, plaintiff in error alleged that the prosecuting attorney purposely refrained from endorsing on the indictment the names of certain witnesses to be used against plaintiff in error at the trial; that as a subject of the King of Great Britain, under and by virtue of treaties, as well as under the laws and Constitution

of the Federal government and the laws of Nations, and the laws of the State of Missouri, he was entitled to a fair and impartial trial; to be fully informed of the nature and cause of the accusation against him, and to know who are the witnesses against him, etc.

By the action of the court in overruling the said motion and plea, it was contended by plaintiff in error that he was denied the rights therein asserted and that a Federal question was thus presented by the record. The guarantees in criminal prosecutions of the rights of the accused to a trial by an impartial jury, to be informed of the nature and cause of the accusation against him, and to be confronted with the witnesses against him, are found in Article VI of the Amendments to the Federal Constitution. It is settled law that "the first ten amendments to the Federal Constitution contain no restrictions on the powers of the State, but were intended to operate solely on the Federal government."

Brown vs. New Jersey, 175 U. S. 172.
Barron vs. Baltimore, 7 Pet. 243.
Fox vs. Ohio, 5 How. 410.
Twitchell vs. Commonwealth, 7 Wall. 321.
United States vs. Cruikshank, 82 U. S. 542, 552.
Spies vs. Illinois, 123 U. S. 131.
Davis vs. Texas, 139 U. S. 651.

VI.

It will be observed that the rights, privileges and immunities claimed by the plaintiff in error in said motion to quash, and plea in abatement are all based upon the alleged act of the prosecuting attorney in intentionally refraining from endorsing the names of certain witnesses on the indictment.

While the Federal and State Constitutions in cases within their respective jurisdictions, guarantee to the accused the right to be confronted with the witnesses against him, the accused has no constitutional right to be notified in advance who those witnesses shall be.

The accused was not possessed of such right under the common law.

In 3 Wigmore on Evidence, section 1850, the common law practice is stated as follows:

"In the orthodox common law practice no notice was required to be given to the accused, in any criminal prosecution, of the name or testimony of any witnesses intended to be produced on behalf of the prosecution.

1873, Christiancy, C. J., in Hill vs. People, 26 Mich. 496, 497:

" 'The common law did not require the names of any of the witnesses to be indorsed upon the indictment for any purpose connected with the trial. But as the witnesses who were to testify before the grand jury were sworn in open court before they were sent to the grand jury, a list of the witnesses intended to be examined before that jury was required to be indorsed on the back of the bill as drawn up to be laid before them. This was required for two purposes: first, that the crier or other officer whose duty it was to swear the witness might know who were to be called and sworn and that he might certify to their being sworn, which he did by adding after their names 'sworn in court;' and, second, that the grand jury might know what witness to call and who had been sworn. In this mode, it is true, a defendant indicted for a misdemeanor incidentally got the benefit of a list of the witnesses who had testified before the grand jury, because in cases of misdemeanor he was entitled to a copy of the indictment. But in cases of felony he failed to receive even this incidental benefit, as in such cases he was not entitled to a copy of the indictment.'

"It follows that, apart from the express or implied requiremet of some statute, there is at common law no rule of evidence excluding witnesses whose names have not been furnished to the accused; nor is there any rule of preliminary procedure permitting the accused to obtain such a list by motion before trial."

1 Bishop's New Crim. Proc. sec. 869a.

Ballard vs. State, 19 Neb. 609.

The right of the accused as to the endorsement of names of the witnesses on the indictment is statutory, and in the State of Missouri such endorsement is provided for in section 2517, R. S., 1899, in which statute the right of the State to use other witnesses

not so endorsed is also recognized. It is manifest that if the right upon which plaintiff in error bases his claim of constitutional right is purely statutory, no Federal question could arise out of a denial of such right, and the decision of the Supreme Court of Missouri that he had been tried in accordance with the procedure provided for by the statutes of that State is final.

Brooks vs. Missouri, 124 U. S. 394.

VII.

In his application for a change of venue, plaintiff in error alleges that he is a citizen and subject of the King of Great Britain, and as such by virtue of the treaties between this government and the British government, as well as under the laws and Constitution of the Federal government, and also under the laws of Nations, is entitled to a fair and impartial trial, and that a fair and impartial trial cannot be had in said circuit, and that under said treaties, laws of Nations and constitutional rights, as well as under the laws of this State, he is entitled to a removal of this cause to some other circuit and county. It is also alleged in said application for a change of venue that the clause in section 2576 of the R. S. of Mo., 1899, providing that the court or judge, in vacation, shall fix the number of witnesses for which the State or county shall be liable in the hearing of an application for a change of venue, is unconstitutional and void in that it violates the law of Nations, the statutes aforesaid and the Federal Constitution and the Fourteenth Amendment thereof. As the record fails to show that any limit to the number of witnesses for which the State would be liable was fixed by the court under the provisions of said statute, and as no exception is shown to have been taken to any action of the court therein, the question of the constitutionality of said clause of the statute was not before the Supreme Court of the State for review, and, therefore, not before this court.

Spies vs. Illinois, *supra.*

The defendant in a criminal case has no constitutional right to a change of venue. In the case of State vs. Thompson, 141 Mo. 408, the Court said:

> "No doubt exists of the power of the State to prescribe the terms and conditions upon which changes of

venue may be granted. There is no constitutional right to such a change. The State very wisely requires the prosecution to be had in the county in which the offense is committed, unless the court is satisfied by the evidence that a fair trial can not be had therein."

State ex rel. vs. Wofford, 119 Mo. 375.

It is provided by the statutes of the State of Missouri that in criminal cases the defendant shall be entitled to a change of venue if the minds of the inhabitants of the county are so prejudiced against him that he cannot have a fair and impartial trial. It is for the court to determine from the evidence whether or not such prejudice exists. And the denial of the application for a change of venue is a matter of practice and procedure of the State court.

"Questions relating to matters of pleading and practice under the laws of a State involve no Federal question."

Taylor's Juris. & Proc. of the U. S. Sup. Ct., sec. 219.

Re. Robertson, 156 U. S. 185.

Brooks vs. Missouri, 124 U. S. 394.

Caldwell vs. Texas, 137 U. S. 698.

Davis vs. Texas, 139 U. S. 651.

VIII.

In the rulings of the trial court on the demurrer, motion to quash the indictment, plea in abatement and application for a change of venue, there was clearly no denial of fundamental rights, no denial of due process of law or the equal protection of the laws to the plaintiff in error presenting a Federal question under the Fourteenth Amendment of the Federal Constitution.

In Guthrie's "The Fourteenth Amendment to the Constitution of the United States," at page 70, it is said:

"It is important to appreciate that 'due process of law' is process according to the system of law obtaining in each State, and not according to any general law of the United States. In ascertaining and determining such law, regard should be had to the usages, public policy and modes of proceeding existing in the respective States,

and these should control unless shown to be wholly unsuited to the subject matter. No violation of due process of law is involved when the law is executed according to the customary forms and established usages of the particular State, or in subordination to the principles which underlie them. As was said in a leading case: 'The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury, and on the other side no such right. Each State prescribed its own modes of judicial proceeding.' "

And in "The Fourteenth Amendment" by Brannock, at page 282, that author says:

> "It is well settled that a regular trial, criminal or civil, in the due and orderly course of State law, is due process under the Fourteenth Amendment, even though there be error in the proceeding, which would reverse it on appeal to a state court, provided the judgment be not utterly void."

IX.

In the case of Lewis vs. Missouri, 101 U. S., at page 31, construing the "equal protection of the laws" clause of the Fourteenth Amendment this Court said:

> "We might go still further and say, with undoubted truth, that there is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt the civil law and its methods of procedure for New York City and the surrounding counties, and the common law and its method of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the Fourteenth Amendment, be a denial to any person of the equal protection of the laws. If every person residing or being in either portion of the State should be accorded the equal protection of the laws

prevailing there, he could not justly complain of a violation of the clause referred to. For, as before said, it has respect to persons and classes of persons. It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances."

The record in this case shows that plaintiff in error was tried and convicted according to the laws of the State of Missouri applicable alike to all charged with crime within her borders; that he was denied no right, privilege or immunity claimed under the Constitution, or any treaty or statute of or commission held or authority exercised under the United States; that no federal question is presented to authorize and sustain the jurisdiction of this court, and the defendant in error respectfully asks that the writ of error be dismissed.

X

The writ of error in this case should be dismissed for the reason that no assignment of errors was filed with the petition for the writ of error herein or annexed to and returned with the writ of error to this Court, and no plain error is apparent upon the face of the record.

Section 997, R. S. Comp. Stat. 1901.
Rule 21, Sec. 4, Rules of this Court.
Rowe vs. Phillips, 152 U. S. 87.
Lloyd vs. Chapman, 93 Fed. Rep. 599.

XI.

Although, in the opinion of this Court, the record may show that this Court has jurisdiction, it is manifest that the writ of error was taken for delay only, and that the question on which the jurisdiction depends is so frivolous as not to need further argument, and, therefore, the judgment of the Supreme Court of the State of Missouri should be affirmed.

Douglas vs. Wallace, 161 U. S. 346.
Chanute City vs. Trader, 132 U. S. 210.
Whitney vs. Cook, 99 U. S. 607.
Hinckley vs. Morton, 103 U. S. 764.
Micas vs. Williams, 104 U. S. 556.

It is therefore respectfully submitted by the defendant in error that the writ of error herein should be dismissed for want of jurisdiction, or if this Court has jurisdiction that the judgment of the Supreme Court of the State of Missouri should be affirmed.

HERBERT S. HADLEY, Attorney-General of Missouri,
JOHN KENNISH, Assistant Attorney-General,
For Defendant in Eror.